




# MBTA Transit Police

DEPARTMENT MANUAL	
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## General Order No. 2019-36

SUBJECT PATROL Prison Rape Elimination Act (PREA)	
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- 1.0 **POLICY.** In accordance with the *Prison Rape Elimination Act (PREA) of 2003*, the Department established this zero tolerance policy toward all forms of sexual abuse and sexual harassment towards any prisoner. Also ensuring all prisoners have the right to be free from sexual abuse and sexual harassment, and establishes zero tolerance towards all forms of retaliation against anyone who reports sexual abuse and sexual harassment or who cooperates in a sexual abuse investigation. {§115.111 (a)-1}
  
- 2.0 **TERMINOLOGY.** The following is a list of common terms and their definitions: {§115.111 (a)-3}
  - **PRISON RAPE ELIMINATION ACT (PREA).** Signed into law on September 4, 2003. The Prison Rape Elimination Act establishes a standard of zero tolerance for rape and sexual assault or sexual harassment in any prison, jail, police lockup, or juvenile facility.
  - **BOOKING OFFICER.** Officer primarily responsible for the supervision and control of prisoners in the facility.
  - **EMPLOYEE.** A person who works directly for the MBTA Transit Police Department.
  - **EXIGENT CIRCUMSTANCES.** Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a Department.
  - **GENDER NONCONFORMING.** A person whose appearance or manner does not conform to traditional societal gender expectations.
  - **INTERSEX.** A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.
  - **JUVENILE.** Any person under the age of 18.
  - **LOCKUP.** A facility that contains holding cells, cell blocks, or other secure enclosures that are under the control of a law enforcement, court, or custodial officer and primarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.
  - **MEDICAL PRACTITIONER.** A health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

- **MENTAL HEALTH PRACTITIONER.** A mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.
- **SEARCH.** A running of the hands over the clothed body of a detainee or prisoner by an Officer to determine whether the individual possesses contraband.
- **PRISONER.** Any person detained in a lockup, regardless of adjudication status.
- **STRIP SEARCH.** A search which requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person’s breasts, buttocks, or genitalia.
- **TRANSGENDER.** A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.
- **EXONERATED.** The incident did occur, but the actions of the accused were in compliance with Department policies, rules, and procedures. This definition would also include those allegations not directed at the individual but rather deal solely with a complainant’s objection to, or criticism of, a Department policy or procedure.
- **SUSTAINED ALLEGATION.** An allegation that was investigated and determined to have occurred.
- **UNFOUNDED ALLEGATION.** An allegation that was investigated and determined not to have occurred.
- **NOT SUSTAINED ALLEGATION.** An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
- **SEXUAL ABUSE OF A PRISONER BY ANOTHER PRISONER.** Sexual abuse of a prisoner by another prisoner as defined by section 115.6 of [PREA](#) and [MGLs](#), if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse.
- **SEXUAL ABUSE OF A PRISONER BY AN EMPLOYEE.** Sexual abuse of a Prisoner by an employee as defined by section 115.6 of [PREA](#) and [MGLs](#), with or without consent of the prisoner.
- **VOYEURISM BY AN EMPLOYEE.** An invasion of privacy of a prisoner by an employee for reasons unrelated to official duties, such as peering at a prisoner who is using a toilet in his/her cell to perform bodily functions; requiring a prisoner to expose his/ buttocks, genitals, or breasts; or taking images of all or part of a prisoner’s naked body or of a prisoner performing bodily functions.
- **SEXUAL HARASSMENT.** The repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one prisoner toward another; and repeated verbal comments or gestures of a sexual nature to a prisoner by an employee, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

- 3.0 **STAFFING PLAN.** The Patrol Operations Division Commander developed the following staffing plan which provides for adequate levels of staffing and video monitoring to protect prisoners against abuse. {§115.113 (a)-1}

The Booking Officer is responsible for all booking and physical/visual monitoring of prisoners.

The Duty Supervisor is responsible for overseeing the Communications Center and Holding Facility. He/she will video monitor the Holding Facility. If a second Duty Supervisor is scheduled, the second Duty Supervisor shall assume the responsibilities of the Holding Facility.

The Monitor Room Officer is responsible for audio and video monitoring of the Holding Facility.

Each time the staffing plan is not complied with, the Duty Supervisor shall document and justify all deviations from the staffing plan and forward the same to the Patrol Operations Division Commander and the PREA Coordinator. {§115.113 (b)-1}

This policy shall be reviewed annually by the Patrol Operations Division Commander to determine whether adjustments are needed in the Staffing Plan, prevailing staffing patterns, monitoring, or the allocation of resources to commit to the Staffing Plan to ensure its compliance. {§115.113 (c)-1}

- 4.0 **JUVENILE PRISONERS.** Juveniles and youthful prisoners shall be held separately from adult prisoners. {§115.114 (a)-1}

- 5.0 **LIMITS TO CROSS GENDER VIEWING AND SEARCHES.** Officers shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners. Officers shall document all cross-gender strip searches and cross-gender visual body cavity searches. Officers shall allow prisoners to perform bodily functions without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Officers of the opposite sex shall announce their presence when entering an area where prisoners are likely to be performing bodily functions. Officers shall not search or physically examine a transgender or intersex prisoner for the sole purpose of determining the prisoner's genital status. If the prisoner's genital status is unknown, it may be determined during conversations with the prisoner. Officers are trained how to conduct cross-gender pat-down searches, and searches of transgender and intersex prisoners, in a professional and respectful manner, and in the least intrusive manner possible, consistent with safety and security needs. {§115.115}

- 6.0 **PRISONERS WITH A DISABILITY.** Prisoners with disabilities include prisoners who are deaf, hard of hearing, ([Massachusetts Commission for the Deaf and Hard of Hearing](#)) blind or have low vision, and those who have intellectual, psychiatric, or speech disabilities ([Disabled Persons Protection Commission](#)). Employees shall take appropriate steps to ensure prisoners with disabilities have an equal opportunity to benefit from all aspects of the Department's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include providing access to interpreters who can interpret effectively, accurately, and impartially when necessary to ensure effective communication with prisoners who are deaf or hard of hearing.

In addition, employees shall ensure that written materials are provided in formats and through methods that ensure effective communication with prisoners with disabilities. {§115.111 (a)-2, §115.116 (a)-1}

- 7.0 **PRISONERS WITH LIMITED ENGLISH PROFICIENCY.** Employees shall take reasonable steps to ensure prisoners with limited English proficiency have meaningful access to information regarding the Department's policies and efforts to prevent, detect, and respond to sexual abuse and sexual harassment including by providing interpreters who can interpret effectively, accurately,

and impartially. (See DM [Chapter 182 Calls for Service](#) regarding the Language Line.) {§115.111 (a)-2, §115.116 (a)-1}

8.0 **PRISONER INTERPRETERS.** No employee shall use prisoners as interpreters, readers, or otherwise request assistance from another prisoner except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the prisoner's safety, the performance of first-response duties, or the investigation of the prisoner's sexual abuse/harassment allegations. {§115.116 (c)-1}

9.0 **HIRING AND PROMOTING PRACTICES.** The Department shall not hire or promote anyone who may have contact with prisoners who:

- has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
- has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, coercion, or if the victim did not consent or was unable to consent or refuse; or
- has been civilly or administratively adjudicated to have engaged in the activity described in the paragraphs above. {§115.117 (a)-1}

The Department shall consider any incidents of sexual abuse and/or harassment in determining whether to hire or promote an employee who may have contact with prisoners. {§115.117 (b)-1}

Before hiring new employees who may have contact with prisoners, the Department shall: perform a criminal background records check on all applicants; and make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse, or any resignation during a pending investigation of an allegation of sexual abuse. {§115.117 (c)-1}

The Department shall ask all applicants and employees who may have direct contact with prisoners about previous misconduct described in this section, in: written applications and/or interviews for hiring or promotion; and interviews or written self-evaluations conducted as part of reviews of current employees. Any promotional candidate will have a criminal background check conducted and a copy placed in their personnel file. (See DM Ch. 21 Selection of Personnel) {§115.117 (a), (b), (f)}

All employees shall disclose any of the misconduct described in this section. Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination. (See DM Chapter 101 Standard of Conduct) {§115.117 (g)-1}

Any employee determined to have engaged in sexual abuse or sexual harassment of prisoners as defined by policy shall be subject to discipline. The presumptive sanction for having engaged in prohibited behavior under this policy is termination.

All current employees having contact with prisoners are subject to a criminal history check (BOP) every five (5) years. {§115.117 (c)-1, (e)-1}

10.0 **EVIDENCE PROTOCOL AND FORENSIC MEDICAL EXAMINATIONS.** The Department is responsible for investigating allegations of sexual abuse in its Holding Facility, the Department shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions and in accordance with Department Manual Chapter 283-Crime Scene Services. The Department offers all victims of sexual abuse access to forensic medical examinations at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault

Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The Department shall document its efforts to provide SAFEs or SANEs.

If the victim is transported for a forensic examination to a hospital that offers victim advocacy services, the victim shall be permitted to use such services to the extent available, consistent with safety and security needs. {§115.121}

11.0 **FIRST RESPONDER RESPONSIBILITIES.** The first Officer to respond to a report of a sexual assault or sexual harassment shall:

- immediately separate the alleged victim and abuser;
- take immediate action to protect the prisoner from substantial risk of imminent sexual abuse;
- keep the prisoner either with the Officer or in the cell and under surveillance until a Supervisor can investigate and determine any further actions to take to protect the prisoner;
- follow evidence protocol that maximizes the potential for obtaining usable physical evidence including preserving and protecting any crime scene until appropriate steps can be taken to collect any evidence;
- if the abuse occurred within a time period that still allows for the collection of physical evidence, request the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating;
- offer all victims access to forensic medical examinations performed by a Sexual Assault Forensic Examiner (SAFE), Sexual Assault Nurse Examiners (SANEs) or qualified medical practitioner without financial cost to the victim, if evidentiary or medically appropriate; {§115.121 (c)-1, -2, -3, -4}
- if the prisoner is transported for a forensic examination to an outside hospital that offers victim advocacy services, ensure that the prisoner be permitted to use such services to the extent available, consistent with security needs;
- document all efforts to provide a SAFE or medical practitioner;
- attempt to make a victim advocate from a rape crisis center or other facility available to the prisoner if transported to a hospital or other medical facility consistent with security needs; and
- accompany the victim through the forensic medical examination process and interviews.

12.0 **PREA COORDINATED RESPONSE PLAN.** If a prisoner reports he/she was sexually harassed while in the Holding Facility, the following actions shall be taken:

First Responder. {§115.164}

- Immediately separate the alleged victim and abuser;
- preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;

- if the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating;
- if the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating; and
- immediately notify the Duty Supervisor.

Duty Supervisor. {§115.165}

- Take immediate actions as a first responder pursuant to this policy;
- explain to the alleged victim the need for a forensic medical exam and offer the victim the option of undergoing one without any financial costs;
- notify, if necessary, local EMS and a local medical facility for an assessment of alleged victim's acute medical needs and to make an assessment of necessary treatment; {§115.121 (d)-1}
- offer the presence of a victim advocate or Officer during the exam; {§115.121 (d)-2}
- notify the Patrol Operations Division Commander, Specialized PREA Investigator(s), and PREA Coordinator as soon as possible;
- make best efforts to ensure that examinations are conducted by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), or ensure that a qualified medical practitioner performs forensic medical examinations;
- offer alleged victim services by providing the victim with list of local sexual abuse advocates and/or crisis centers found in the Department's PREA brochure;
- ensure the appropriate journal entries are made; {§115.121 (c)-5}
- if the victim is transferred from the lockup to a jail, prison, or medical facility, inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise;
- provide for any special needs the victim may have;
- submit, within four (4) days, a report of the incident to the Patrol Operations Division Commander and PREA Coordinator, along with all other related reports;
- assign the PREA Coordinator to immediately assist with the investigation and to conduct an Administrative Review of the incident; {§115.122 (a)-1}
- inform the victim of his or her rights under relevant policies, federal, and state laws;
- interview the victim and any witnesses; and

- document all referrals of allegations of sexual abuse or sexual harassment for criminal investigation. {§115.122 (a)-1, (b)-3, §115.165}

PREA Investigator.

- Respond to the scene and take command of the investigation;
- take all actions pursuant to this policy;
- inform the victim of his/her rights under relevant policies, federal, and state laws;
- handle the custody of evidence;
- explain to the alleged victim the need for a forensic medical exam and offer the victim the option of undergoing one at no cost;
- offer the presence of a victim advocate or other staff member during the exam;
- interview the victim and any witnesses;
- submit report(s) of investigation pursuant to this policy; and
- document all referrals of allegations of sexual abuse or sexual harassment for criminal investigation. {§115.111 (a)-5, §115.122 (a)-1, (b)-3, §115.165}

Administrative Services Division Commander.

- Conduct an Administrative Review of the incident; {§115.122 (a)-1}
- prepare a report for the Superintendent within thirty (30) days of the incident; and
- maintain a file for PREA incident review.

Note: The Administrative Review is to ensure that members followed Department procedures during the incident.

Patrol Operations Division Commander.

- Review reports and take actions to prevent reoccurrences; and
- submit reports regarding preventative measures to the Superintendent for review and action.

13.0 **EMPLOYEE TRAINING.** The Department trains all employees who have contact with prisoners to be able to fulfill their responsibilities under the Department's sexual abuse prevention, detection, and response policies and procedures, including training on:

- The Department's zero-tolerance policy and prisoners' right to be free from sexual abuse and sexual harassment;
- the dynamics of sexual abuse and harassment in confinement settings, including which prisoners are most vulnerable in lockup settings;

- the right of prisoners and employees to be free from retaliation for reporting sexual abuse or harassment;
- how to detect and respond to signs of threatened and actual abuse;
- how to communicate effectively and professionally with all prisoners; and
- how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

All current employees who may have contact with prisoners shall be trained within one year of the effective date of this policy, and the Department shall provide annual refresher information to all such employees to ensure that they know the Department's current sexual abuse and sexual harassment policies and procedures. The Department shall document, through employee signature or electronic verification, that employees understand the training they have received. {§115.131}

\*Note: Non-essential personnel (e.g. civilians, contractors, volunteers, cleaners, repairmen, etc.) are not allowed in the booking/holding facility while the booking process is being conducted. Non-essential personnel may enter the facility only when escorted by the Booking Officer and all prisoners are secured in holding cells. Under no circumstances are contractors, volunteers, or any non-sworn personnel to have any contact with prisoners with the exception of Fire, EMS, or hospital medical staff. {§115.117 (d)-1, 2, §115.177}

- 14.0 **PRISONER NOTIFICATION OF THE DEPARTMENT'S ZERO-TOLERANCE POLICY.** During the booking process, Officers shall notify all prisoners of the Department's zero-tolerance policy regarding sexual abuse and sexual harassment. {§115.132}
- 15.0 **SPECIALIZED TRAINING: INVESTIGATIONS.** In addition to the general training provided to all employees pursuant to §115.131, the Department shall ensure that, to the extent the Department itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings. The specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. The Department shall maintain documentation that Department's investigators have completed the required specialized training in conducting sexual abuse investigations. {115.134}
- 16.0 **SCREENING FOR RISK OF VICTIMIZATION AND ABUSIVENESS.** The Holding Facility is utilized to house prisoners overnight, individually in single occupancy cells. Therefore, this screening is unnecessary. {§115.141}
- 17.0 **PRISONER REPORTING.** The Department provides multiple ways for prisoners to privately report sexual abuse and sexual harassment, retaliation by other prisoners or employees for reporting sexual abuse and sexual harassment, and employee neglect or violation of responsibilities that may have contributed to such incidents.
- The Department shall inform prisoners that they or someone on their behalf can also report an alleged incident of sexual abuse or sexual harassment to the Suffolk County District Attorney's Sexual Assault Line at 617-619-4350, a third party entity not affiliated with the Department. {§115.154}
- 18.0 **THIRD PARTY REPORTING.** Employees shall accept reports made verbally (in person or via the phone), in writing (e.g. US mail, email, website, etc.), anonymously, or from third parties on



behalf of the alleged victim. All verbal reports will be promptly documented and forwarded to the PREA Investigator. {§115.151}

- 19.0 **EMPLOYEE AND DEPARTMENT REPORTING DUTIES.** The Department requires all employees to report immediately and according to Department policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in the Department's Holding Facility; retaliation against prisoners or employees who reported such an incident; and any employee neglect or violation of responsibilities that may have contributed to an incident or retaliation. Apart from reporting to designated Supervisors, employees shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in Department policy, to make treatment and investigation decisions. If the alleged victim is under the age of 18 or considered a vulnerable adult under a state or local vulnerable persons statute, the Department shall report the allegation to the designated state or local services agency under applicable mandatory reporting laws. The Department shall report all allegations of sexual abuse, including third-party and anonymous reports, to the Department's designated investigators. {§115.161}

Employees may choose to report sexual abuse and/or sexual harassment of prisoners in-person, by phone, email, privately or any means with the employee feels comfortable in reporting to a Supervisor, the PREA Coordinator, PREA Investigator, or to a Deputy Superintendent. {§115.151}

- 20.0 **AGENCIES PROTECTION DUTIES.** When the Department learns that a prisoner is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the prisoner. {§115.162}

- 21.0 **REPORTING TO OTHER FACILITIES.** Upon receiving an allegation that a prisoner was sexually abused while confined at another facility, the Superintendent shall be notified immediately through the chain of command. The Superintendent shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation. The Superintendent shall document in writing that he/she has provided such notification.

If the Department receives notifications of allegations from outside agencies, the Department shall ensure that the allegation is investigated in accordance with these standards. {§115.163}

- 22.0 **PRESERVATION OF ABILITY TO PROTECT PRISONERS FROM CONTACT WITH ABUSERS.** Neither the Department nor any other governmental entity responsible for collective bargaining on the Department's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the Department's ability to remove alleged employee sexual abusers from contact with prisoners pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

Nothing in this policy shall restrict the entering into or renewal of agreements that govern:

- the conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§115.172 and 115.176; or
- whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the employee's personnel file following a determination that the allegation of sexual abuse is not substantiated. {§115.166}

- 23.0 **DEPARTMENT PROTECTION AGAINST RETALIATION.** The Department shall protect all prisoners and employees who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other prisoners or employees, and designated the PREA Investigator with monitoring retaliation. The Department employs multiple

protection measures, such as removal of alleged employee or prisoner abusers from contact with victims, and emotional support services for employees who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. The PREA Investigator shall monitor the conduct and treatment of prisoners or employees who have reported sexual abuse and of prisoners who were reported to have suffered sexual abuse, and shall act promptly to remedy any such retaliation. Complainants will be monitored by the PREA Investigator for any possible retaliation on a case by case basis which may consist of random check-ins via calls, texts, or in person weekly or biweekly for ninety (90) days following the initial date of the complaint. In the event a case of retaliation is reported, an investigation shall be conducted. The Department will offer protection to the reporting party, which may include, but is not limited to, separation through reassignment, EAP referral, outside counseling, etc. If any other individual who cooperates with an investigation expresses a fear of retaliation, the Department shall take appropriate measures to protect that individual against retaliation. The Department's obligation to monitor shall terminate if the PREA Investigator determines that the allegation is unfounded. {§115.167}

- 24.0 **CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS.** The Department conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports. Where sexual abuse is alleged, the Department shall use investigators who have received special training in sexual abuse investigations pursuant to §115.134. Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse, if any, involving the alleged abuser. If the quality of evidence appears to support criminal prosecution, the Department shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as a prisoner or employee. The Department shall not require a prisoner who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

Administrative investigations shall include an effort to determine whether employee's actions or failures to act contributed to the abuse and shall be documented in a written report that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution. The Department shall retain all written reports referenced above in this section for as long as the alleged abuser is incarcerated or employed by the Department, plus five years. The departure of the alleged abuser or victim from the employment or control of the Holding Facility or Department shall not provide a basis for terminating an investigation. {§115.171}

The Department shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated. {§115.172}

- 25.0 **DISCIPLINE FOR EMPLOYEES.** Employees shall be subject to disciplinary sanctions up to and including termination for violating the Department's sexual abuse or sexual harassment policies. Termination shall be the presumptive disciplinary sanction for employees who have engaged in sexual abuse.

Disciplinary sanctions for violations of department policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the employee's disciplinary history, and the sanctions imposed for comparable offenses by other employees with similar histories.

All terminations for violations of Department's sexual abuse or sexual harassment policies, or resignations by employees who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies. {§115.176}

26.0 **ACCESS TO EMERGENCY MEDICAL SERVICES.** Prisoner victims of sexual abuse in the Holding Facility shall receive timely, unimpeded access to emergency medical treatment. Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. {§115.182}

27.0 **SEXUAL ABUSE INCIDENT REVIEWS.** The lockup shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. Such review shall ordinarily occur within thirty (30) days of the conclusion of the investigation. The review team shall include the Command Staff, with input from Supervisors and Investigators.

The review team shall:

- consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
- consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; or was motivated or otherwise caused by other group dynamics;
- examine the area in the Holding Facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- assess the adequacy of staffing levels in that area during different shifts;
- assess whether monitoring technology should be deployed or augmented to supplement supervision by employees; and
- prepare a report of its findings, including but not necessarily limited to determinations made pursuant to the above paragraphs of this section, and any recommendations for improvement and submit such report to the Superintendent and Department PREA coordinator.

The Department shall implement the recommendations for improvement, or shall document its reasons for not doing so. {§115.186}

28.0 **DATA COLLECTION.** The Department shall collect accurate, uniform data for every allegation of sexual abuse in the Holding Facility using a standardized instrument and set of definitions. The Department shall aggregate the incident-based sexual abuse data at least annually. The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Local Jail Jurisdictions Survey of Sexual Violence conducted by the Department of Justice, or any subsequent form developed by the Department of Justice and designated for lockups.

The Department shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. Upon request, the Department shall provide all such data from the previous calendar year to the Department of Justice no later than June 30. {§115.187}

29.0 **DATA REVIEW FOR CORRECTIVE ACTION.** The Department shall review data collected and aggregated pursuant to §115.187 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

- identifying problem areas;
- taking corrective action on an ongoing basis; and
- preparing an annual report of its findings and corrective actions for each lockup, as well as the Department as a whole.

Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the Department's progress in addressing sexual abuse.

The Department's report shall be approved by the Chief of Police and made readily available to the public through the Department's website. {§115.188}

30.0 **DATA STORAGE, PUBLICATIONS, AND DESTRUCTION.** The Department shall ensure that data collected pursuant to §115.187 are securely retained. The Department shall make all aggregated sexual abuse data from the Holding Facility readily available to the public at least annually through the website. Before making aggregated sexual abuse data publicly available, the Department shall remove all personal identifiers. The Department shall maintain sexual abuse data collected pursuant to §115.187 for at least ten (10) years after the date of the initial collection unless Federal, State, or local law requires otherwise. {§115.189}

*Sections 9.0, 16.0, 17.0, 18.0, 23.0 revised 10/8/19*